IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 77/2006

Gajanan Navelkar. ..... Petitioner.

V/s.

The Secretary/Sarpanch
Village Panchayat of Virnoda and ors. ..... Respondents.

Mrs. A. A. Agni, Advocate for the petitioner.

Shri A. Kansar, Advocate for the respondent No.2.

Shri M. D. Salkar, Addl. Govt. Advocate for the respondents No.3 to 5.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 2ND MARCH, 2006.

P.C.

Heard. Though several issues are sought to be raised in the matter, it is too premature for this Court to address to those issues, except the one which relates to Order dated 16/5/2001 passed by the Secretary of the Village Panchayat of Virnoda allegedly under Section 47 of the Goa Panchayat Raj Act, 1994 (hereinafter, referred to as “the said Act”).

2. Undisputedly, the impugned order dated 16.5.2001 is for

direction to remove the illegal construction within the specified period or that steps would be taken for demolition thereof. Notice has been issued by the Secretary of the Panchayat, allegedly in exercise of powers under Section 47 of the said Act. Undisputedly, neither under Section 47 nor under any other provisions of the said Act the Secretary is empowered to issue such order. On the contrary, Section 47 of the said Act empowers the Secretary to issue the order in the nature of licences for construction, repairs, modification, alteration, so also occupancy certificate in pursuance of the resolution passed by the Panchayat. It also empowers the Secretary to initiate action for stopping and/or demolishing an unauthorised structure without the prior permission of the Panchayat, but that too after resolution having been passed to that effect by the Panchayat. In short, the Secretary is authorised under Section 47 of the said Act to issue directions in terms of the resolution passed by the Panchayat. On the face of the reading of the impugned order, it nowhere refers to any resolution directing demolition of the construction in question. It merely refers to an order having been passed by the Dy. Director of Panchayats. It is sought to be contended on behalf of the petitioners that in fact there are resolutions to the contrary i.e. for regularisation of the alleged illegal construction after passing of the order by the Dy. Director of Panchayats, which was sought to be implemented by the Secretary by order dated 16.5.2001.

3. It is, thus, apparent from the order itself that the Authority who issued the order nowhere discloses the source of power for issuance of such order. The facts disclosed in the order apparently discloses absence of power to the concerned authority to issue such order. Needless to say that such an order cannot be sustained and is liable to be set aside. As already observed above, since Section 47 of the said Act merely empowers the Secretary to enforce the resolution passed by the Panchayat and the Order dated 16.5.01 nowhere refers to any such enforcement of the resolution of the Panchayat and further the contention of the petitioner is that subsequent to the order, there are resolutions of the Panchayat for regularisation of the alleged construction, the Secretary could not have issued the impugned order. This, however, would not prohibit the competent authority from taking steps in accordance with the provisions of the law, if there is an illegal construction already carried out by the petitioner and challenge to the decision to demolish has not yielded fruitful result in favour of the petitioner. So also, it would not prohibit the petitioner from pursuing his remedy against any such action in case there has already been lawful regularisation of the construction alleged to have been carried out by the petitioner without prior permission. However, it is too premature to express any opinion about the rival contentions sought to be raised in that regard. Suffice it to observe that the Order dated 16.5.2001, for the reasons stated herein above, needs to be quashed and set aside, while

leaving open all other issues sought to be raised in the petition.

4. In the result, therefore, the petition is partly allowed. The impugned order dated 16.5.01 passed by the Secretary of the Village Panchayat of Virnoda is, hereby, quashed and set aside while leaving open all other issues sought to be raised in the petition. There shall be no order as to costs.

R.M.S. KHANDEPARKAR, J.

ssm.